

COHEN & GREEN

July 23, 2020

Hon. Analisa Torres, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 15D
New York, NY 10007

By Electronic Filing.

**Re: Request for Clarification regarding Service of Process in
Gallagher et al. v. New York State Board of Elections et al., 20-cv-5504**

Dear Judge Torres:

My firm represents the Plaintiffs in the matter named above. In their memorandum (ECF No. 17), Defendants contest the manner of service ordered by Judge Ramos, already accomplished (ECF No. 7). Specifically, they write:

“As of the filing of this brief, Plaintiffs have not served the State Defendants with the summons and complaint in the manner prescribed by Fed. R. Civ. P. 4.^[1] Plaintiffs have provided copies of the summons and complaint and motion papers via email. While Judge Ramos endorsed Plaintiffs’ July 17, 2020 letter that contained a request to serve the State Defendants “**by reliable electronic means**,” the **Court’s order did not expressly address that request**. ECF No. 6.”

ECF No. 17, n. 1 (emphasis added).

While any other issue is something we would leave to address in our Reply, service goes to whether the Court has jurisdiction at all – and if Defendants are contesting service, the Court may need to hold a separate “traverse” hearing. *See generally, Old Republic Ins. Co. v. Pac. Fin. Servs. of Am., Inc.*, 301 F.3d 54 (2d Cir. 2001).

We therefore ask the Court to clarify that its Order granting Plaintiffs’ motion requesting permission to serve Defendants by reasonable electronic means permitted such service in the manner set out in the affidavit submitted as ECF No. 7 (attached). In the alternative, consistent with its Order of today, we ask that the Court order that service on Defendants be permitted by email to Owen

¹ On this count, Defendants are simply wrong. Rule 4 expressly contemplates that “the Court may approve alternative service methods.” *Ransome v. Epstein*, 2018 U.S. Dist. LEXIS 15295, at *2-3 (SDNY, Jan. 30, 2018), discussing Fed. R. Civ. P. 4(e)(1) and CPLR § 308(5) (which permits service “in such manner as the court, upon motion without notice, directs”), *cited in* ECF No. 5 at 2.



Conroy at the Attorney General's office, who has appeared on behalf of all Defendants (which we have also already done and as to which we can shortly file an affidavit of service).

I have sought consent from Defendants' counsel before filing this motion, but have not received a response. However, in a telephone conversation yesterday, Defendants counsel suggested they would not be willing to waive this issue.

Respectfully submitted,

/s/ J. Remy Green

J. Remy Green

Honorific/Pronouns: Mx., they/ their/ them

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All relevant parties by ECF and email.